

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
tw telecom Inc. Petition for)	
Declaratory Ruling Regarding)	WC Docket No. 11-119
Direct IP-to-IP Interconnection)	
Pursuant to Section 251(c)(2))	
of the Communications Act)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom) hereby responds to the Commission’s request for comment on the Petition for Declaratory Ruling filed by tw telecom in this docket.¹ Specifically, tw telecom (TWTC) is seeking a declaratory ruling from the Commission that Section 251(c)(2) of the Act requires incumbent local exchange carriers (“ILECs”) to interconnect for the exchange of IP-originated voice over Internet protocol (“VoIP”) traffic in IP format.²

Although TWTC states that the legal analysis supporting its position is “straightforward,” it is necessarily contingent upon a determination that the Commission has to-date expressly declined to make—that IP-originated VoIP is a telecommunications service subject to the

¹ See Comment Sought on TW Telecom Inc. Petition for Declaratory Ruling Regarding Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, Public Notice, DA 11-1198, WC Docket No. 11-119 (July 15, 2011) (“Public Notice”).

² *Petition for Declaratory Ruling that tw telecom Inc. has the Right to IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services*, WC Docket No. 11-119 (filed June 30, 2011) (“TWTC Petition”).

panoply of legacy obligations under Title II of the Act. Irrespective of the classification issue, however, TWTC's efforts in this petition to redirect network investment priorities to suit its own interest—and to shift its own network deployment costs on to ILECs—is unavailing as the Act does not require ILECs to deploy “unbuilt, superior networks” to accommodate the demands of every competitor. Indeed, granting TWTC's petition would be contrary to public policy as it would simply serve to undermine efforts to deploy broadband networks in rural, high-cost areas of the country. ILECs, rather than TWTC, are the companies delivering broadband to these communities and the Commission should not adopt rules that discourage these efforts.

DISCUSSION

I. The Commission Has Not Addressed the Service Classification of IP-Originated Traffic.

The gating question to TWTC's petition, as it readily acknowledges, is whether IP-originated VoIP service is a telecommunications service within the meaning of the Act.³ According to TWTC, reaching this result is a fairly simple, “straightforward” exercise.⁴

As the Commission is fully aware, however, the question of whether IP-originated VoIP is a telecommunications service or an information service has been placed squarely before it in several previous proceedings, with multiple parties arguing each side of this legal issue. To date, however, the Commission has declined to provide a definitive answer. As the Commission recently expressly stated, “we recognize that the Commission thus far has not

³ *TWTC Petition* at p. 2. TWTC also recognizes that, in addition to finding that IP-originated traffic is a telecommunications service, the Commission must also find that they are telephone exchange or exchange access services. *Id.*

⁴ *Id.* at 10.

addressed the classification of interconnected VoIP services.”⁵ Moreover, as the Commission recognized in the *Connect America Fund NPRM*, the classification of interconnected VoIP could potentially have significant implications for an array of on-going policy issues, including reform of the existing universal service and inter-carrier compensation regimes.⁶ All this makes the petition unquestionably premature.

II. Section 251(c)(2) Does Not Require ILECs to Deploy New “Unbuilt” Networks to Accommodate Competitors’ Interconnection Demands.

In any event, the relief requested by TWTC is beyond the scope of Section 251(c)(2) irrespective of the classification. Fundamentally, TWTC is requesting that the Commission find that ILECs must upon request deploy new network facilities and functionalities that are not today a part of their networks. But the 8th Circuit Court of Appeals decision in *Iowa Utilities Bd. v. FCC* makes patently clear that Section 251(c)(2) requires access “only to an incumbent LECs existing network—not to a yet unbuilt superior one.”⁷

Today, the vast majority ILEC voice traffic is terminated in TDM format. In order to provide for direct IP-to-IP interconnection, ILECs would need to purchase and deploy IP gateways along with other facilities to exchange and transport traffic in IP, as well as network equipment to convert the traffic to TDM for switching and termination on its existing network. These costs, under TWTC’s arguments, would largely be borne by the ILECs’ customers; while the beneficiary of such a requirement would be TWTC, as it would be able to shift its own costs

⁵ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, para. 618 (February 9, 2011) (“*Connect America Fund NPRM*”).

⁶ *Id.*

⁷ *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

of providing service on to others. But, as the 8th Circuit has made clear, Section 251(c)(2) “does not mandate that incumbent LECs cater to every desire of every requesting carrier.”⁸

III. Mandating IP-to-IP Interconnection Pursuant to Section 251(c)(2) Would Discourage Rural Broadband Deployment.

The National Broadband Plan emphasized that the Commission’s primary policy goal must be broadband investment and the deployment of broadband service to all Americans. But while the widespread deployment of broadband networks will certainly drive the adoption of VoIP, TWTC’s petition turns these priorities on their head. That is, granting the requested relief would force ILECs to divert limited investment resources from broadband deployment and upgrades, where it is truly needed, to voice interconnection facilities, where it is not. And unlike companies such as TWTC, ILECs are investing to expand the availability of broadband to unserved and underserved areas of the country.

Furthermore, while TWTC posits that mandating IP-to-IP interconnection is in the public interest, the benefits suggested in the petition are illusory. TWTC’s assertion relies on the argument that converting IP traffic to TDM creates a risk that some signaling information will be lost resulting in a degradation of service.⁹ In reality, the vast majority of such traffic will have to be converted to TDM in any event in order to be terminated on the ILEC’s network. Instead, TWTC’s petition is really an effort to force a shift in ILEC network investment by each of hundreds of ILECs simply to reduce TWTC’s costs of providing service. As investment dollars are limited—particularly as access lines decline—granting the petition could only have a genuinely detrimental effect on broadband investment.

⁸ *Iowa Utilities Bd.* at 813.

⁹ TWTC Petition at 7.

As explained previously, the Act does not allow for such a result. Beyond undermining Commission policy on broadband deployment, the petition's cost-shifting demand would result in higher costs on residential consumers, especially impacting rural residents, for the benefit of a company that has no intention to provide service to such customers. According to its own Securities and Exchange Commission filings, TWTC seeks to serve only medium and large enterprise-level customers with data-intensive requirements in seventy-five densely populated metropolitan markets.¹⁰ The impact of TWTC's petition, accordingly, would shift TWTC's costs of providing service to these low-cost, high-margin enterprise customers onto consumers in high-cost and rural areas. At the same time, of course, ILECs are actually seeking to deploy broadband to these high-cost consumers—something that TWTC has no intention of doing—and the result requested by TWTC would necessarily divert money and resources from that effort.

It is also important to note that TWTC has made no showing that interconnection for the delivery of IP-originated traffic has not and will not develop based on voluntary, market-based arrangements. While the petition identifies a couple cases where ILECs have objected to requests for mandatory IP-to-IP interconnection *pursuant to Section 251 of the Act*, they have provided no evidence that carriers have refused to consider negotiating voluntary agreements for the exchange and termination of this traffic. Indeed, it is the voluntary, non-regulated nature of the Internet that has allowed for the rapid development of IP-based technologies in the first place. TWTC, however, would have the Commission replace these negotiated agreements with

¹⁰ See, TWTC 10K SEC filing at <http://www.sec.gov/Archives/edgar/data/1057758/000119312511045871/d10k.htm>

all of the heavy-handed regulatory mandates of Section 251 of the Act without evidence of market failure.¹¹

IV. Questions of Technical Feasibility Must Be Addressed Through a Rulemaking.

TWTC's requested relief is wrong on both legal and policy grounds for the reasons explained above. But even if the Commission were to entertain the question, it cannot provide the relief requested by TWTC through a declaratory ruling.

TWTC avers that the Commission need only "clarify" that IP-to-IP interconnection is technically feasible and then leave the details to state commissions under the Section 252 process.¹² To the contrary, however, Section 252 of the Act requires that state arbitrations implement the standards established in rules prescribed by the Commission; and the Commission itself has recently acknowledged that it has no rules concerning IP-to-IP interconnection.¹³

As the Commission stated in the *Local Competition First R&O*, "national rules regarding interconnection pursuant to section 251(c)(2) are necessary to....permit all carriers, including small entities and small incumbent LECs, to plan regional or national networks using the same interconnection points in similar networks nationwide...."¹⁴ It added that, "Such rules will also avoid relitigating, in multiple states, the issue of whether interconnection at a particular point is

¹¹ In fact, quite to the contrary, there is a rapidly growing market of independent companies, such as Neutral Tandem and HyperCube, providing IP-to-TDM protocol conversions. Presumably, granting TWTC's petition would substantially harm this developing industry.

¹² TWTC Petition at 21.

¹³ 47 U.S.C. §252(c)(1); *also*, *Connect America Fund NPRM* at para. 679.

¹⁴ *Local Competition First R&O*, at para. 179.

technically feasible.”¹⁵ But the Commission just recently emphasized that no such rules or obligations exist under Section 251 for IP-to-IP interconnection:

For example, we note that interconnection for circuit-switched voice traffic is governed by Section 251 of the Act. At the same time, *there historically have not been Commission rules governing IP interconnection* for the exchange of Internet traffic.¹⁶

Of course, the concerns identified by the Commission in the *Local Competition First R&O* with respect to well-established PSTN technologies are multiplied in connection with IP traffic given, as the Commission has recognized, that “IP transmission standards and practices are evolving rapidly.”¹⁷ In the first instance, this fact underscores why the relief requested by TWTC is both outside of the scope of Section 251(c)(2) and bad public policy. Any new network facilities and technologies deployed today to meet this obligation could quickly become obsolete—subjecting the ILEC to deploying another round of new facilities to satisfy even newer technological demands from the next provider seeking IP-to-IP interconnection. Moreover, especially given the nature of the Internet and IP-traffic as being un-tethered from traditional geographic lines, it would be a fundamental error for the Commission to allow unfettered discretion for state commissions to mandate 50 different interconnection standards across the country.¹⁸ Such a result would unquestionably deter both network investment and the growth of IP technologies.

¹⁵ *Id.*

¹⁶ *Connect America Fund NPRM* at para 679 (emphasis added).

¹⁷ *Id.* at para. 627.

¹⁸ See, e.g., *Ex parte Letter from VON Coalition, National Association of Manufacturers, TechAmerica, Information Technology Industry Council and Telecommunications Industry Association*, WC Docket No. 10-90, at p. 3 (filed August 3, 2011) (asserting that allowing different state regulations “on any-distance, multi-function VoIP services would conflict with federal policies favoring the introduction of innovative services.”).

CONCLUSION

For the foregoing reasons, USTelecom respectfully urges the Commission to deny TWTC's request for declaratory ruling.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Glenn Reynolds".

Glenn Reynolds
Vice President for Policy
United States Telecom Association
607 14th Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 326-7271